



PEGASUSTOWER

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June 4, 2004

RECEIVED

JUN 7 2004

PUBLIC SERVICE
COMMISSION

Beth O'Donnell
Executive Director
Commonwealth of Kentucky
Environmental and Public Protection Cabinet
Public Service Commission
211 Sower Blvd.
Frankfort, Kentucky 40602-0615

RE: Case No. 2004-00136
Filing Deficiencies

Dear Ms. O'Donnell:

You will find enclosed ten (10) certified copies of Pegasus Tower Company LTD's Articles of Incorporation per your letter dated May 21, 2004.

Please let us know if you need any additional information from us.

Thank you,

Amy Stiltner-Childress

Amy Stiltner-Childress
Contracts Administrator

Commonwealth of Virginia

JUN 7 2004



State Corporation Commission

PUBLIC SERVICE
COMMISSION

I Certify the Following from the Records of the Commission:

The foregoing is a true copy of all documents constituting the charter of Pegasus Tower Company, Ltd. on file in the Clerk's Office of the Commission.

Nothing more is hereby certified.



*Signed and Sealed at Richmond on this Date:
May 27, 2004*

Joel H. Peck
Joel H. Peck, Clerk of the Commission

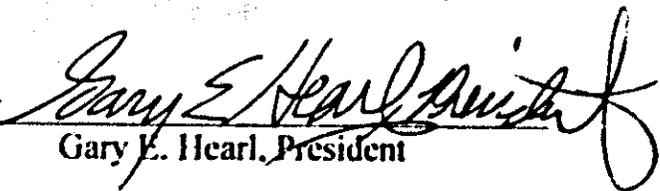
ARTICLES OF AMENDMENT AND
ARTICLES OF RESTATEMENT OF
ARTICLES OF INCORPORATION
OF
PEGASUS TOWER COMPANY, LTD.

1. The name of the Corporation is Pegasus Tower Company, Ltd..
2. The Articles of Incorporation are amended and restated and attached hereto as Exhibit A.
3. The amendments and restatement to the Articles of Incorporation were adopted by the board of directors of the Corporation.
4. The amendments and restatement to the Articles of Incorporation were adopted by unanimous consent of the shareholders.
5. The amendments and the restatement were adopted effective as of the date of filing with the Commission.

Dated: July 25, 2001

PEGASUS TOWER COMPANY, LTD.

By


Gary E. Hearl, President

AMENDED AND RESTATED ARTICLES OF INCORPORATION

OF

PEGASUS TOWER COMPANY, LTD.

ARTICLE I

The name of the Corporation is Pegasus Tower Company, Ltd.

ARTICLE II

The purpose for which the Corporation formed is to transact any or all lawful business not required to be specifically stated in these Amended and Restated Articles of Incorporation (the "*Articles of Incorporation*") for which a corporation may be incorporated under the Virginia Stock Corporation Act, as amended from time to time (the "*Act*").

ARTICLE III

The Corporation shall have the number of directors set forth in the Corporation's Bylaws, as amended.

ARTICLE IV

A. *Authorized Shares.* This Corporation is authorized to issue two classes of stock to be designated, respectively, "*Common Stock*" and "*Preferred Stock*". The total number of shares of Common Stock which this Corporation is authorized to issue is Six Million Nine Hundred Fifty Thousand (6,900,000) designated as follows: (1) Four Million Two Hundred Fifty Thousand (4,250,000) shares of which shall be designated Series A Common Stock ("*Series A Common*") and (2) Two Million Six Hundred Fifty Thousand (2,650,000) shares of which shall be designated Series B Common Stock ("*Series B Common*") (the Series A Common and the Series B common are collectively referred to herein as the "*Common Stock*"). The total number of shares of Preferred Stock which this Corporation has authority to issue is Five Million (5,000,000) designated as follows: (1) Two Million Five Hundred Thousand (2,500,000) shares of which shall be designated Series A Convertible Preferred Stock ("*Series A Preferred*") and (2) Two Million Five Hundred Thousand (2,500,000) shares of which shall be designated Series B Convertible Preferred Stock ("*Series B Preferred*") (the Series A Preferred and Series B Preferred are collectively referred to as the "*Preferred Stock*"). The Common Stock shall be without par value. The Preferred Stock shall be without par value (\$1.00 stated value). No holder of shares of any class of the Corporation shall have any preemptive or preferential right under Section 13.1-651 of the Act to purchase or subscribe to (i) any shares of any class of the Corporation, whether now or hereafter authorized; (ii) any warrants, rights or options to purchase any such shares; or (iii) any securities or obligations

convertible into any such shares or into warrants, rights or options to purchase any such shares.

B. *Rights of Common Stock and Preferred Stock.* The rights, preferences, privileges and restrictions granted to or imposed on the Common Stock and Preferred Stock are as follows:

1. *Dividends.*

(a) *Series A Preferred.* The holders of the Series A Preferred shall be entitled to receive dividends at the rate of eight cent (\$0.08) per annum per share (as adjusted for any stock dividends, combinations or splits with respect to such shares), payable out of any assets legally available therefor. Prior to the third anniversary of the closing of first sale of Series A Preferred by the Corporation, such dividends shall be payable only when, as, and if declared by the Board of Directors, shall accrue, and shall be payable as printed in the next sentence. Beginning on the third anniversary of the closing of the first sale of the Series A Preferred by the Corporation, the Corporation shall, out of legally available assets and pursuant to the Act, begin paying such dividends in cash and, in addition, shall pay all accrued and unpaid dividends in six equal installments over the twelve month period following such third anniversary date.

(b) *Series B Preferred.* The holders of the Series B Preferred shall be entitled to receive dividends at the rate of eight cent (\$0.08) per annum per share (as adjusted for any stock dividends, combinations or splits with respect to such shares), payable out of any assets legally available therefore. Prior to the third anniversary of the closing of first sale of Series B Preferred by the Corporation, such dividends shall be payable only when, as, and if declared by the Board of Directors, shall accrue, and shall be payable as printed in the next sentence. Beginning on the third anniversary of the closing of the first sale of the Series B Preferred by the Corporation, the Corporation shall, out of legally available assets and pursuant to the Act, begin paying such dividends in cash and, in addition, shall pay all unpaid accumulated dividends in quarterly installments over the thirty-six month period following such third anniversary date. Beginning on the third anniversary date, all regular annual dividends shall be paid out in six equal installments throughout the year in which such dividends are due.

(c) *Dividend Preference.* The payment of unpaid accumulated dividends on the Series B Preferred shall be subordinate to the payment of unpaid accumulated dividends on the Series A Preferred but shall be paid in preference to the payment of unpaid accumulated dividends on any other series of Preferred Stock. No dividends (other than those payable solely in the Common Stock of the Corporation) shall be paid or declared on any Common Stock of the Corporation during any fiscal year of the Corporation until all accumulated and unpaid dividends (as adjusted for any stock dividends, combinations or splits with respect to such shares) on the Preferred Stock shall have been paid or declared and set apart during that fiscal year.

2. *Liquidation Preference.*

(a) *Preference.* In the event of any liquidation, dissolution or winding up of the Corporation, either voluntarily or involuntarily (a "*Liquidation Event*"), the holders of

Preferred Stock first shall be entitled to receive in order of class (first to Series A Preferred, then to Series B Preferred, etc.), prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of Common Stock of the Corporation, an amount equal to the stated value of each share of Preferred Stock then so held, as adjusted for any stock dividends, combinations or splits with respect to such shares. After the payment or the setting apart of payment of the stated value of each share of Preferred Stock, the holders of each class of Preferred Stock shall be entitled to receive in order of class (first to Series A Preferred, then to Series B Preferred, etc.), prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of Common Stock of the Corporation, an amount equal to all unpaid accrued dividends belonging to each class of Preferred Stock.

All of the preferential amounts to be paid to the holders of Preferred Stock under this Section 2 shall be paid or set apart for payment before the payment or setting apart for payment of any amount for, or the distribution of any assets or funds of this Corporation to, the holders of the Common Stock in connection with such liquidation, dissolution or winding up.

If, upon such Liquidation Event, the assets and funds of the Corporation are insufficient to provide for the payment of the full aforesaid preferential amount to the holders of Preferred Stock, such assets and funds as are available shall be distributed ratably among the holders of Preferred Stock in the order of distribution described in the first paragraph of this Section 2(a) (stated value per share, as adjusted, to Series A Preferred, stated value per share, as adjusted, to Series B Preferred, all unpaid accrued dividends to Series A Preferred, all unpaid accrued dividends to Series B Preferred, etc.) and in proportion to the full preferential amount each such holder is otherwise entitled to receive until exhausted.

After the payment or the setting apart of payment of the full preferential amounts to the holders of Preferred Stock as described above, the holders of the Common Stock and the Series A Preferred shall be entitled to receive all remaining assets and funds of the Corporation ratably on a per-share basis (in the case of the Series A Preferred based upon the number of shares of Common Stock into which each share of Series A Preferred is convertible).

Notwithstanding anything in this Section 2 to the contrary, the maximum amount the holders of the Series A Preferred shall be entitled to receive upon a Liquidation Event shall be equal to the greater of (i) Three Dollars (\$3.00) per share as adjusted for any stock dividends, combinations or splits with respect to such shares, or (ii) the amount the holders of the Series A Preferred would be entitled to receive if the Series A Preferred were converted to Series A Common immediately prior to the Liquidation Event.

(b) *Deemed Liquidation.* A merger, consolidation or sale of all or substantially all of the assets of the Corporation which will result in the Corporation's stockholders immediately prior to such transaction not holding (by virtue of such shares or securities issued solely with respect thereto) at least 50% of the voting power of the surviving, continuing or purchasing entity, shall be deemed to be a Liquidation Event.

(c) *Noncash Distributions.* If any of the assets of the Corporation are to

be distributed other than in cash under this Section 2 or for any purpose, then the Board of Directors of the Corporation shall promptly engage independent competent appraisers to determine the value of the assets to be distributed to the holders of Preferred Stock and Common Stock. The Corporation shall, upon receipt of such appraiser's valuation, give prompt written notice to each holder of shares of Preferred Stock and Common Stock of the appraiser's valuation. Notwithstanding the above, any securities to be distributed to the stockholders shall be valued as follows:

(i) If traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the 30-day period ending three (3) business days prior to the closing;

(ii) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the 30-day period ending three (3) business days prior to the closing; and

(iii) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Corporation and the holders of not less than a majority of the outstanding shares of Preferred Stock; provided that if the Corporation and the holders of a majority of the outstanding shares of Preferred Stock are unable to reach agreement, then by independent appraisal by an investment banker hired and paid by the Corporation, but acceptable to the holders of a majority of the outstanding shares of Preferred Stock.

3. *Voting Rights.*

(a) *General.* Except as set forth herein or as otherwise required by law, the holder of each share of Common Stock issued and outstanding shall have one vote for each share of Common Stock held by such holder, and the holder of each share of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such share of Preferred Stock could be converted at the record date for determination of the stockholders entitled to vote on such matters, or, if no such record date is established, at the date such vote is taken or any written consent of stockholders is solicited, such votes to be counted together with all other shares of stock of the Corporation having general voting power and not counted separately as a class. Holders of Common Stock and Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation.

(b) *Board of Directors.* The Corporation shall not, without the written consent or affirmative vote of the holders of at least sixty percent (60%) of the then outstanding shares of Series A Preferred given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a series, increase the maximum number of directors constituting the Board of Directors to a number in excess of five.

(c) *Election of Board; Committees.* The election of the members of the Board of Directors, and the establishment of, and appointment to, committees thereunder, shall be as set forth in that certain Series A Convertible Preferred Stock Purchase Agreement dated November 12, 1999, entered into by and between the Corporation and the initial holders of the Series A

Preferred; provided, however, that the holders of Series B Preferred and Series B Common shall not have the right to vote for the election of the members of the Board of Directors. A representative of the Series B Preferred, elected by a majority of the holders of the Series B Preferred, shall have observation rights at the meetings of the Board of Directors. The election of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

(d) *Series A Preferred Voting Restrictions.* In addition to any other vote required by law or the Articles of Incorporation, without the approval of the holders of at least sixty percent (60%) of the then outstanding shares of Series A Preferred, given in writing or by vote at a meeting, consenting or voting (as the case may be) as a separate class, the Corporation will not:

(i) Alter, repeal or otherwise adversely affect the rights and preferences of the holders of Series A Preferred;

(ii) Increase the authorized number of shares of Preferred Stock;

(iii) Create or authorize the creation of any additional class or series of shares of stock unless the same ranks junior to the Series A Preferred as to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends, redemption and voting;

(iv) Consolidate or merge into or with any other entity or entities or sell, lease, abandon, transfer or otherwise dispose of all or substantially all its assets;

(v) Redeem capital stock of the Corporation other than pursuant to Section 6 of this Article IV or pursuant to the contractual rights of the Corporation to repurchase capital stock from former employees of the Corporation;

(vi) Effect a reclassification or recapitalization of the outstanding capital stock of the Corporation;

(vii) Issue any securities of the Corporation other than stock or stock options approved by the Compensation Committee of the Board of Directors; or

(viii) Amend these Articles of Incorporation or the Corporation's Bylaws.

(e) *Series A Common Voting Restrictions.* In addition to any other vote required by law or the Articles of Incorporation, without the approval of the holders of at least two-thirds of the then outstanding shares of Series A Common, given in writing or by vote at a meeting, consenting or voting (as the case may be) as a separate class, the Corporation will not (i) effect a merger, reorganization, or sale of the Corporation or all or substantially all of its assets or (ii) alter or change the rights, preferences or privileges of the Series A Common or increase the authorized number of shares of Series A Common.

(f) *Series B Preferred Voting Restrictions.* In addition to any other vote

required by law or the Articles of Incorporation, without the approval of the holders of at least two-thirds of the then outstanding shares of Series B Preferred, given in writing or by vote at a meeting, consenting or voting (as the case may be) as a separate class, the Corporation will not:

- (i) Alter or change the rights, preferences or privileges of the Series B Preferred;
- (ii) Increase to the authorized number of shares of Series B Preferred;
- (iii) Create any new class or series of stock substantially equal to or having preference over the existing Series B Preferred;
- (iv) Effect a merger, reorganization, or sale of the Corporation or all or substantially all of its assets;
- (v) Effect a reclassification or recapitalization of the outstanding capital stock of the Corporation;
- (vi) Redeem capital stock of the Corporation other than pursuant to Section 6 of this Article IV or pursuant to the contractual rights of the Corporation to repurchase capital stock from former employees of the Corporation; or
- (vii) Take any other actions on which the Series B Preferred is required by the Act to vote as a separate class.

(g) *Series B Common Voting Restrictions.* In addition to any other vote required by law or the Articles of Incorporation, without the approval of the holders of at least two-thirds of the then outstanding shares of Series B Common, given in writing or by vote at a meeting, consenting or voting (as the case may be) as a separate class, the Corporation will not:

- (i) Alter or change the rights, preferences or privileges of the Series B Common;
- (ii) Increase the authorized number of shares of Series B Common;
- (iii) Create any new class or series of stock substantially equal to or having preference over the existing Series B Common;
- (iv) Effect a merger, reorganization, or sale of the Corporation or all or substantially all of its assets;
- (v) Effect a reclassification or recapitalization of the outstanding capital stock of the Corporation;
- (vi) Redeem capital stock of the Corporation other than pursuant to

Section 6 of this Article IV or pursuant to the contractual rights of the Corporation to repurchase capital stock from former employees of the Corporation; or

(vii) Take any other actions on which the Series B Common is required by the Act to vote as a separate class.

4a. *Series A Preferred Conversion.* The holders of the Series A Preferred have conversion rights as follows (the "*Series A Conversion Rights*"):

(a) *Series A Preferred Right to Convert.* Each share of Series A Preferred shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Series A Preferred into such number of fully paid and nonassessable shares of Series A Common as is determined by dividing \$1.00 (as adjusted for any stock dividends, combinations, or splits with respect to shares of the Series A Preferred) by the Series A Conversion Price, as hereinafter provided, in effect at the time of the conversion. The price at which shares of Series A Common shall be deliverable upon conversion of the Series A Preferred (the "*Series A Conversion Price*") shall initially be \$1.00 per share of Series A Common. Such initial Series A Conversion Price shall be subject to adjustment as hereinafter provided.

(b) *Automatic Conversion.* Each share of Series A Preferred shall automatically be converted into shares of Series A Common at the then effective, applicable Series A Conversion Price upon the earlier to occur of (i) immediately prior to the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of securities for the account of the Corporation to the public at a price per share of Common Stock of not less than \$3.00 per share (subject to proportionate adjustment in the event of a stock split, reverse stock split, reclassification or stock dividend) and an aggregate offering price of not less than Twenty Five Million Dollars (\$25,000,000), (ii) the election of holders of at least sixty percent (60%) of the Series A Preferred to convert such shares into Series A Common; or (iii) upon the conversion of sixty percent (60%) of the Series A Preferred pursuant to Section 4a(a) above;

(c) *Mechanics of Conversion.* No fractional shares of Series A Common shall be issued upon conversion of Series A Preferred. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then effective respective Series A Conversion Price. Before any holder of Series A Preferred shall be entitled to convert the same into full shares of Series A Common and to receive certificates therefor, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Series A Preferred shall give written notice to the Corporation at such office that he elects to convert the same. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred, a certificate or certificates for the number of shares of Series A Common to which he shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Series A Common. Such conversion shall be deemed

to have been made immediately prior to the close of business on the date of such surrender of the shares of Series A Preferred are to be converted, and the person or persons entitled to receive the shares of Series A Common issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Series A Common on such date.

(d) *Reservation of Stock Issuable Upon Conversion.* The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Series A Common solely for the purpose of effecting the conversion of the shares of the Series A Preferred such number of its shares of Series A Common as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred; and if at any time the number of authorized but unissued shares of Series A Common shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred, in addition to such other remedies as shall be available to the holder of such Series A Preferred, this Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Series A Common to such number of shares as shall be sufficient for such purposes.

4b. *Series B Preferred Conversion.* The holders of the Series B Preferred have conversion rights as follows (the "*Series B Conversion Rights*"):

(a) *Series B Preferred Right to Convert.* Each share of Series B Preferred shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Series B Preferred into such number of fully paid and nonassessable shares of Series B Common as is determined by dividing \$1.00 (as adjusted for any stock dividends, combinations, or splits with respect to shares of the Series B Preferred) by the Series B Conversion Price, as hereinafter provided, in effect at the time of the conversion. The price at which shares of Series B Common shall be deliverable upon conversion of the Series B Preferred (the "*Series B Conversion Price*") shall initially be \$1.00 per share of Series B Common. Such initial Series B Conversion Price shall be subject to adjustment as hereinafter provided.

(b) *Automatic Conversion.* Each share of Series B Preferred shall automatically be converted into shares of Series B Common at the then effective, applicable Series B Conversion Price upon the earlier to occur of (i) immediately prior to the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of securities for the account of the Corporation to the public at a price per share of Common Stock of not less than \$3.00 per share (subject to proportionate adjustment in the event of a stock split, reverse stock split, reclassification or stock dividend) and an aggregate offering price of not less than Twenty Five Million Dollars (\$25,000,000), (ii) the election of holders of at least two-thirds of the Series B Preferred to convert such shares into Series B Common; or (iii) upon the conversion of two-thirds of the Series B Preferred pursuant to Section 4b(a) above;

(c) *Mechanics of Conversion.* No fractional shares of Series B Common shall be issued upon conversion of Series B Preferred. In lieu of any fractional shares to which the

holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then effective respective Series B Conversion Price. Before any holder of Series B Preferred shall be entitled to convert the same into full shares of Series B Common and to receive certificates therefor, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Series B Preferred shall give written notice to the Corporation at such office that he elects to convert the same. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series B Preferred, a certificate or certificates for the number of shares of Series B Common to which he shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Series B Common. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series B Preferred are to be converted, and the person or persons entitled to receive the shares of Series B Common issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Series B Common on such date.

(d) *Reservation of Stock Issuable Upon Conversion.* The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Series B Common solely for the purpose of effecting the conversion of the shares of the Series B Preferred such number of its shares of Series B Common as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series B Preferred; and if at any time the number of authorized but unissued shares of Series B Common shall not be sufficient to effect the conversion of all then outstanding shares of the Series B Preferred, in addition to such other remedies as shall be available to the holder of such Series B Preferred, this Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Series B Common to such number of shares as shall be sufficient for such purposes.

5. *Adjustments to Conversion Price of Preferred Stock.*

(a) *Special Definitions.* For purposes of this Section 5, the following definitions shall apply:

(i) "*Options*" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.

(ii) "*Original Issue Date*" for the Series A Preferred shall mean the date on which the first share of Series A Preferred was issued and for the Series B Preferred shall mean the date on which the first share of Series B Preferred was issued.

(iii) "*Convertible Securities*" shall mean any evidences of indebtedness, shares (other than the Series A Preferred or the Series B Preferred) or other securities directly or indirectly convertible into or exchangeable for any class or series of Common Stock.

(iv) "*Additional Shares of Common Stock*" shall mean all shares of any class or series of Common Stock issued (or, pursuant to subsection 5(c), deemed to be issued) by

the Corporation after the Original Issue Date, other than:

(A) shares of the Corporation's Series A Common issued upon conversion of the Series A Preferred or shares of the Corporation's Series B Common issued upon conversion of the Series B Preferred;

(B) shares of Common Stock issued to officers, directors, employees of and consultants to the Corporation pursuant to stock option plans approved by the Compensation Committee of the Board of Directors, pursuant to the Corporation's stock option plan;

(C) as a dividend or distribution on Series A Preferred or Series B Preferred, or for any event for which adjustment is made pursuant to subsection 5(f) or 5(g) hereof;
or

(D) to any bank, equipment or real property lessor or other similar institution if and to the extent that the transaction in which such issuance is to be made is unanimously approved by the Corporation's Board of Directors and is for purposes other than equity financing.

(b) *No Adjustment of Conversion Price.* No adjustment in the Series A Conversion Price or the Series B Conversion Price (referred to collectively in this Section 5 as the "*Conversion Price*") shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the applicable Conversion Price of such series in effect on the date of and immediately prior to such issue.

(c) *Deemed Issue of Additional Shares of Common Stock.* In the event the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number that would result in an adjustment pursuant to clause (ii) below) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share (determined pursuant to subsection 5(g) hereof) of such Additional Shares of Common Stock would be less than the applicable Conversion Price in effect on the date of and immediately prior to such issue, or such record date and provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(i) no further adjustment in the Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such

Options or conversion or exchange of such Convertible Securities:

(iii) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, or increase or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(iv) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:

(A) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange, and

(B) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(v) no readjustment pursuant to clause (ii) or (iii) above shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (i) the Conversion Price on the original adjustment date, or (ii) the Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date; and

(vi) in the case of any Options which expire by their terms not more than 30 days after the date of issue thereof, no adjustment of the Conversion Price shall be made until the expiration or exercise of all such Options, whereupon such adjustment shall be made in the manner provided in clause (iii) above.

(d) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock.

(i) Series A Preferred. In the event that after the Original Issue Date the Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to subsection 5(c)) without consideration or for a consideration per share less than the Series A Conversion Price in effect on the date of and immediately prior to such issue, then and in such event, the Series A Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying the Series A Conversion Price, by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at the Series A Conversion Price; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; and provided further that, for the purposes of this subsection (d), all shares of Common Stock issuable upon conversion of outstanding Series A Preferred and outstanding Convertible Securities or exercise of outstanding Options shall be deemed to be outstanding, and immediately after any Additional Shares of Common Stock are deemed issued pursuant to subsection 5(c), such Additional Shares of Common Stock shall be deemed to be outstanding.

(ii) Series B Preferred. In the event that after the Original Issue Date the Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to subsection 5(c)) without consideration or for a consideration per share less than the Series B Conversion Price in effect on the date of and immediately prior to such issue, then and in such event, the Series B Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying the Series B Conversion Price, by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at the Series B Conversion Price; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; and provided further that, for the purposes of this subsection (d), all shares of Series B Common issuable upon conversion of outstanding Series B Preferred and outstanding Convertible Securities or exercise of outstanding Options shall be deemed to be outstanding, and immediately after any Additional Shares of Common Stock are deemed issued pursuant to subsection 5(c), such Additional Shares of Common Stock shall be deemed to be outstanding.

(e) Determination of Consideration. For purposes of this Section 5, the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(i) Cash and Property: Except as provided in clause (ii) below, such

consideration shall:

(A) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation excluding amounts paid or payable for accrued interest or accrued dividends;

(B) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith by the Board; *provided, however,* that no value shall be attributed to any services performed by any employee, officer or director of the Corporation; and

(C) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received with respect to such Additional Shares of Common Stock, computed as provided in clauses (A) and (B) above, as determined in good faith by the Board.

(iii) *Options and Convertible Securities.* The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 5(c), relating to Options and Convertible Securities, shall be determined by dividing

(A) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities by

(B) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(f) *Adjustments for Stock Dividends, Subdivisions, Combinations or Consolidations of Common Stock.* In the event the outstanding shares of Series A Common shall be subdivided (by stock dividend, stock split, or otherwise), into a greater number of shares of Series A Common, the Series A Conversion Price then in effect shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Series A Common shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Series A Common, the Series A Conversion Price then in effect shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased. In the event the outstanding shares of Series B Common shall be subdivided (by stock dividend, stock split, or

otherwise), into a greater number of shares of Series B Common, the Series B Conversion Price then in effect shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Series B Common shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Series B Common, the Series B Conversion Price then in effect shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

(h) *Adjustments for Other Distributions.* In the event the Corporation at any time or from time to time makes, or fixes a record date for the determination of holders of Series A Common entitled to receive any distribution payable in securities or assets of the Corporation other than shares of Series A Common then and in each such event provision shall be made so that the holders of Series A Preferred shall receive upon conversion thereof, in addition to the number of shares of Series A Common receivable thereupon, the amount of securities or assets of the Corporation which they would have received had their Series A Preferred been converted into Series A Common on the date of such event and had they thereafter, during the period from the date of such event to and including the date of conversion, retained such securities or assets receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 5 with respect to the rights of the holders of Series A Preferred. In the event the Corporation at any time or from time to time makes, or fixes a record date for the determination of holders of Series B Common entitled to receive any distribution payable in securities or assets of the Corporation other than shares of Series B Common then and in each such event provision shall be made so that the holders of Series B Preferred shall receive upon conversion thereof, in addition to the number of shares of Series B Common receivable thereupon, the amount of securities or assets of the Corporation which they would have received had their Series B Preferred been converted into Series B Common on the date of such event and had they thereafter, during the period from the date of such event to and including the date of conversion, retained such securities or assets receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 5 with respect to the rights of the holders of Series B Preferred.

(i) *Adjustments for Reclassification, Exchange and Substitution.* If the Series A Common issuable upon conversion of the Series A Preferred or the Series B Common issuable upon conversion of the Series B Preferred shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for above), then and in each such event the holder of each share of Series A Preferred or Series B Preferred, as the case may be, shall have the right thereafter to convert such share into the kind and amount of shares of stock and other securities and property receivable upon such reorganization or reclassification or other change by holders of the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of the Series A Preferred or the Series B Preferred, as the case may be, immediately before that change, all subject to further adjustment as provided herein.

(j) *No Impairment.* Without the prior written consent of the holders of a majority of the Preferred Stock, the Corporation will not, by amendment of its Articles of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any

of the terms to be observed or performed hereunder by the Corporation but will at all times in good faith assist in the carrying out of all the provisions of Section 5 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Preferred Stock against impairment.

(l)*Certificate as to Adjustments.* Upon the occurrence of each adjustment or readjustment of the Series A Conversion Price or the Series B Conversion Price pursuant to Section 5, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series A Preferred and Series B Preferred, as the case may be, a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred or Series B Preferred, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the applicable Conversion Price at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of Series A Preferred or Series B Preferred, as the case may be.

6. *Redemption.*

(a) *Put Option by Series A Preferred Holders.*

(i) Beginning on the fifth anniversary date on which the first share of Series A Preferred was issued, the holders of at least fifty percent (50%) of the then outstanding shares of Series A Preferred may, with the consent of more than two-thirds of the holders of the Corporation's Series B Preferred Stock and Series B Common Stock, voting together as a separate class, require the Corporation, to the extent it may lawfully do so, to redeem all, but not less than all (except as provided below), of the shares of Series A Preferred held by such holders for a sum per share equal to Three Dollars (\$3.00) per share (as adjusted for any stock dividends, combinations or splits with respect to such shares) plus all accrued and unpaid dividends (the total amount of such payment is hereafter referred to collectively, as the "*Series A Redemption Price*"), payable in cash or in ten (10) equal quarterly installments of principal and interest at the rate of eight percent (8%) per annum as determined by the Board of Directors. In the event the consent required by the preceding sentence are not received, then the holders of at least fifty percent (50%) of the then outstanding shares of Series A Preferred may require the Corporation, to the extent it may lawfully do so, to redeem all, but not less than all (except as provided below), of the shares of Series A Preferred held by such holders for a sum per share equal to One Dollar (\$1.00) per share (as adjusted for any stock dividends, combinations or splits with respect to such shares) plus all accrued and unpaid dividends, payable in ten (10) equal quarterly installments of principal and interest at the rate of eight percent (8%) per annum.

(ii) After notice has been given by holders initiating a request for redemption, the Corporation shall send written notice by mail, first class postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of Series A Preferred, at the address last shown on the records of the Corporation for each

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holder, specifying the number of shares to be redeemed, the Series A Redemption Price, the place at which payment may be obtained and calling upon each initiating holder to surrender to the

Corporation, in the manner and at the price designated, his, her or its certificate or certificates representing the shares to be redeemed (the "*Series A Redemption Notice*"). Within 10 days of receipt of the Series A Redemption Notice, a non-initiating holder of Series A Preferred may, by written notice, require the Corporation to redeem its shares along with those of the initiating holders. Except as provided herein, on or after the applicable Series A Redemption Date, each holder of Series A Preferred to be redeemed at such time shall surrender to the Corporation the certificate or certificates representing such shares, in the manner and at the price designated in the Series A Redemption Notice, and thereupon the Series A Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In the event fewer than all of the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(iii) Unless there shall have been a default in payment of the Series A Redemption Price, all rights of the holders of shares of Series A Preferred being redeemed (except the right to receive the Series A Redemption Price upon surrender of their certificate or certificates) shall cease with respect to such shares at such time, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for redemption are insufficient to redeem the total number of shares of Series A Preferred required to be redeemed, those funds that are legally available will be used to redeem the maximum possible number of such shares ratably among the holders of such shares to be redeemed based upon their holdings of Series A Preferred. The shares of Series A Preferred not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. Once additional funds of the Corporation are legally available for the redemption of shares of Series A Preferred, such funds will immediately be used to redeem the balance of the shares that the Corporation has become obligated to redeem on either Series A Redemption Date but that it has not redeemed.

(b) *Put Option by Series B Preferred Holders.*

(i) Beginning on or after the date which is sixty-six (66) months after the date the first share of Series B Preferred was issued, at the election of the holders of more than two-thirds of the then outstanding shares of Series B Preferred, the Corporation, to the extent it may lawfully do so, shall redeem the Series B Preferred owned by the electing holders and other holders who desire to be redeemed for a sum per share equal to One Dollar (\$1.00) plus all accrued and unpaid dividends (the total amount of such payment is hereafter referred to collectively as the "*Series B Redemption Price*"), payable in twelve (12) equal quarterly installments of principal and interest at the rate of eight percent (8%) per annum.

(ii) After notice has been given by holders initiating a request for redemption, the Corporation shall send written notice by mail, first class postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of Series B Preferred, at the address last shown on the records of the Corporation for each holder, specifying the number of shares to be redeemed, the Series B Redemption Price, the place at which payment may be obtained and calling upon each initiating holder to surrender to the

Corporation, in the manner and at the price designated, his, her or its certificate or certificates representing the shares to be redeemed (the "*Series B Redemption Notice*"). Within 10 days of receipt of the Series B Redemption Notice, a non-initiating holder of Series B Preferred may, by written notice, require the Corporation to redeem its shares along with those of the initiating holders. Except as provided herein, on or after the applicable Series B Redemption Date, each holder of Series B Preferred to be redeemed at such time shall surrender to the Corporation the certificate or certificates representing such shares, in the manner and at the price designated in the Series B Redemption Notice, and thereupon the Series B Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In the event fewer than all of the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(iii) Unless there shall have been a default in payment of the Series B Redemption Price, all rights of the holders of shares of Series B Preferred being redeemed (except the right to receive the Series B Redemption Price upon surrender of their certificate or certificates) shall cease with respect to such shares at such time, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for redemption are insufficient to redeem the total number of shares of Series B Preferred required to be redeemed, those funds that are legally available will be used to redeem the maximum possible number of such shares ratably among the holders of such shares to be redeemed based upon their holdings of Series B Preferred. The shares of Series B Preferred not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. Once additional funds of the Corporation are legally available for the redemption of shares of Series B Preferred, such funds will immediately be used to redeem the balance of the shares that the Corporation has become obligated to redeem on either Series B Redemption Date but that it has not redeemed.

(c) *Common Stock.* The Common Stock shall not be redeemable by the Corporation (other than pursuant to the exercise of a contractual right of first refusal of the Corporation).

7. *Notices of Record Date.* In the event that the Corporation shall propose at any time:

(a) to declare any dividend or distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;

(b) to offer for subscription *pro rata* to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights;

(c) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or

(d) to merge or consolidate with or into any other Corporation, or sell, lease or convey all or substantially all its property or business, or to liquidate, dissolve or wind up, then, in connection with each such event, the Corporation shall send to the holders of the Preferred Stock;

(i) at least 20 days' prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto) or for determining rights to vote in respect of the matters referred to in (c) and (d) above; and

(ii) in the case of the matters referred to in (c) and (d) above, at least 20 days' prior written notice of the date when the same shall take place (and specifying the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event).

Each such written notice shall be delivered personally or given by first class mail, postage prepaid, addressed to the holders of the Preferred Stock at the address for each such holder as shown on the books of this Corporation.

8. *Limitations on Re-issuance.* No share or shares of Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be cancelled, retired and eliminated from the shares which the Corporation shall be authorized to issue.

ARTICLE V

To the full extent that the Act, as it exists on the date hereof or may hereafter be amended, permits the limitation (which limitation shall be (i) \$1 or the minimum amount allowed to be stated by such Act if a specific dollar amount is required to be stated or (ii) the full extent of the limitation set forth in such Act if no specific dollar amount is required to be stated) or elimination of the liability of directors or officers, a director or officer of the Corporation shall not be liable to the Corporation for monetary damages. Any amendment to or repeal of this Article shall not adversely affect any right of protection of a director or officer of the Corporation for or with respect to any acts or omissions of such director or officer occurring prior to such amendment or repeal.

ARTICLE VI

I. In this Article:

"applicant" means the person seeking indemnification pursuant to this Article.

"expenses" includes counsel fees.

"liability" means the obligation to pay a judgment, settlement, penalty, fine, including any excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred

with respect to a proceeding.

"party" includes an individual who was, is or is threatened to be made a named defendant or respondent in a proceeding.

"proceeding" means any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal.

2. In any proceeding brought by or in the right of the Corporation or brought by or on behalf of shareholders of the Corporation, no director or officer of the Corporation shall be liable to the Corporation or its shareholders for monetary damages with respect to any transaction, occurrence or course of conduct, whether before or after the effective date of this Article, except for liability resulting from that person's having engaged in willful misconduct or a knowing violation of the criminal law or any federal or state securities law.

3. The Corporation shall indemnify (i) any person who was or is a party to any proceeding, including a proceeding brought by a shareholder in the right of the Corporation or brought by or on behalf of shareholders of the Corporation, by reason of the fact that the person is or was a director or officer of the Corporation, or (ii) any director or officer who is or was serving at the request of the Corporation as a director, trustee, partner or officer of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against any liability incurred by that person in connection with the proceeding unless that person engaged in willful misconduct or a knowing violation of the criminal law. A person whose duties to the Corporation also impose duties on, or otherwise involve services by, that person to an employee benefit plan or to participants in or beneficiaries of the plan is considered to be serving the plan at the Corporation's request. The Board of Directors is hereby empowered, by a majority vote of a quorum of disinterested directors, to enter into a contract to indemnify any director or officer in respect of any proceedings arising from any act or omission, whether occurring before or after the execution of the contract.

4. No amendment or repeal of this Article shall affect the rights provided under this Article with respect to any act or omission occurring before the amendment or repeal. The Corporation shall promptly take all such actions, and make all such determinations, as shall be necessary or appropriate to comply with its obligation to make any indemnity under this Article and shall promptly pay or reimburse all reasonable expenses, including attorneys' fees, incurred by any such director, officer, employee or agent in connection with such actions and determinations or proceedings of any kind arising therefrom.

5. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that the applicant did not meet the standard of conduct described in Section (2) or (3) of this Article.

6. Any indemnification under Section (3) of this Article (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification is proper in the circumstances because the applicant has met the standard of conduct set forth in Section (3). The determination shall be made:

a. By the Board of Directors by a majority vote of a quorum consisting of directors not at the time parties to the proceeding;

b. If a quorum cannot be obtained under subsection (a) of this Section, by majority vote of a committee duly designated by the Board of Directors (in which designation directors who are parties may participate), consisting solely of two or more directors not at the time parties to the proceeding;

c. By special legal counsel:

(1) Selected by the Board of Directors or its committee in the manner prescribed in subsection (a) or (b) of this section; or

(2) If a quorum of the Board of Directors cannot be obtained under subsection (a) of this section and a committee cannot be designated under subsection (b) of this section, selected by majority vote of the full Board of Directors, in which selection directors who are parties may participate; or

d. By the shareholders, but shares owned by or voted under the control of directors who are at the time parties to the proceeding may not be voted on the determination.

Any evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is appropriate, except that if the determination is made by special legal counsel, such evaluation as to reasonableness of expenses shall be made by those entitled under subsection (c) of this Section 6 to select counsel.

Notwithstanding the foregoing, if the composition of a majority of the Board of Directors has changed after the date of the alleged act or omission with respect to which indemnification is claimed, any determination with respect to any claim for indemnification or advancement of expenses made pursuant to this Article shall be made by special legal counsel agreed upon by the Board of Directors and applicant. If the Board of Directors and the applicant are unable to agree upon such special legal counsel, the Board of Directors and the applicant each shall select a nominee, and the nominees shall select such special legal counsel.

7. a. The Corporation shall pay for or reimburse the reasonable expenses incurred by any applicant who is a party to or otherwise involved in a proceeding in advance of final disposition of the proceeding or the making of any determination under Section (3) if the applicant furnishes the Corporation:

(1) a written statement of the applicant's good faith belief that he or she has met the standard of conduct described in Section (3); and

(2) a written undertaking, executed personally or on the applicant's behalf, to repay the advance if it is ultimately determined that the applicant did not meet such standard of conduct.

... A -

b. The undertaking required by paragraph (2) of subsection (a) of this Section shall be an unlimited general obligation of the applicant but need not be secured and may be accepted without reference to financial ability to make repayment.

c. Authorizations of payments under this Section shall be made by the persons specified in Section 6.

8. The Board of Directors is hereby empowered, by majority vote of a quorum consisting of disinterested directors, to cause the Corporation to indemnify or contract to indemnify any person not specified in Section (2) or (3) of this Article who was, is or may become a party to any proceeding, by reason of the fact that the person is or was an employee or agent of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, to the same extent as if that person were specified as one to whom indemnification is granted in Section (3). The provisions of Sections (4) through (7) of this Article shall be applicable to any indemnification provided hereafter pursuant to this Section (8).

9. The Corporation may purchase and maintain insurance to indemnify it against the whole or any portion of the liability assumed by it accordance with this Article and may also procure insurance, in such amounts as the Board of Directors may determine, on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against any liability asserted against or incurred in any such capacity or arising from the person's status as such, whether or not the Corporation would have power to indemnify that person against such liability under the provisions of this Article.

10. Every reference herein to directors, officers, employees or agents shall include former directors, officers, employees and agents and their respective heirs, executors and administrators. The indemnification hereby provided and provided hereafter pursuant to the power hereby conferred by this Article on the Board of Directors shall not be exclusive of any other rights to which any other person may be entitled, including any right under policies of insurance that may be purchased and maintained by the Corporation or others, with respect to claims, issues or matters in relation to which the Corporation would not have the power to indemnify that person under the provisions of this Article. Such rights shall not prevent or restrict the power of the Corporation to make or provide for any future indemnity, or provisions for determining entitlement to indemnity, pursuant to one or more indemnification agreements, bylaws, or other arrangements (including, without limitation, creation of trust funds or security interests funded by letters of credit or other means) approved by the Board of Directors (whether or not any of the directors of the Corporation shall be a party to or beneficiary of any such agreements, bylaws or arrangements); provided, however, that any provision of such agreements, bylaws or other arrangements shall not be effective if and to the extent that it is determined to be contrary to this Article or applicable laws of the Commonwealth of Virginia.

11. Each provision of this Article shall be severable, and an adverse determination as to any such provision shall in no way affect the validity of any other provision.

ARTICLE VII

Except as provided in (a) Article IV above and (b) Section 4.5 of that certain Series A Convertible Preferred Stock Purchase Agreement dated November 12, 1999 and executed among the Corporation and certain private investors, the Corporation reserves the right to amend, alter, change or repeal any provision contained in these Articles of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

August 17, 2001

The State Corporation Commission has found the accompanying articles submitted on behalf of Pegasus Tower Company, Ltd.

to comply with the requirements of law, and confirms payment of all related fees.

Therefore, it is ORDERED that this

CERTIFICATE OF AMENDMENT AND RESTATEMENT

be issued and admitted to record with the articles of amendment in the Office of the Clerk of the Commission, effective August 17, 2001, at 08:47 AM.

The corporation is granted the authority conferred on it by law in accordance with the articles, subject to the conditions and restrictions imposed by law.

STATE CORPORATION COMMISSION

By



Commissioner

01-08-17-0104
AMENACPT
CIS0436

ARTICLES OF MERGER
Merging

PEGASUS TOWER COMPANY, L.L.C. *dom*
(a Virginia limited liability company)

into

PEGASUS TOWER COMPANY, LTD. *dom*
(a Virginia corporation)

1. The Plan of Merger (the "*Plan*") is attached hereto as Exhibit A.
2. The Plan was submitted to the members and Manager of Pegasus Tower Company, L.L.C. (the "*LLC*") by its manager in accordance with the Virginia Limited Liability Company Act. The Plan was approved by the members and Manager of the LLC pursuant to a unanimous written consent of members dated November 2, 1999.
3. The Plan was approved and adopted by the Board of Directors of Pegasus Tower Company, Ltd. (the "*Corporation*"), in accordance with the Virginia Stock Corporation Act pursuant to the unanimous written consent of directors dated November 2, 1999. The Plan meets all of the requirements of Section 13.1-718 of the Virginia Stock Corporation Act thereby exempting it from the requirement of shareholder approval of the Plan.

Dated: November 2, 1999

PEGASUS TOWER COMPANY, L.L.C.

By: Gary E. Hearl, Manager
Gary E. Hearl, Manager

Date: 11/2/99

PEGASUS TOWER COMPANY, LTD.

By: Gary E. Hearl, President
Gary E. Hearl, President

Date: 11/2/99

PLAN OF MERGER
of
PEGASUS TOWER COMPANY, L.L.C.
with and into
PEGASUS TOWER COMPANY, LTD.

This Agreement and Plan of Merger (the "*Plan*") is made and entered into as of November 2, 1999 between Pegasus Tower Company, L.L.C., a Virginia limited liability company (the "*LLC*"), and Pegasus Tower Company, Ltd., a Virginia corporation (the "*Corporation*"), with reference to the following recitations. The address of each of the LLC and the Corporation is Post Office Box 233, Richlands, Virginia 24641.

A. The Corporation is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia. As of the date hereof, the authorized capital stock of the Corporation consists of 1,700,000 shares of common stock (the "*Virginia Corporation Common Stock*"), without par value, 1 share of which are issued and outstanding, and 1,000,000 shares of preferred stock, no par value, no shares of which are issued and outstanding.

B. The LLC is a limited liability company organized and validly existing under the laws of the Commonwealth of Virginia.

C. The board of directors and shareholders of the Corporation have adopted resolutions by unanimous written consent authorizing the proposed merger (the "*Merger*") of the LLC with and into the Corporation upon the terms and conditions hereinafter set forth in accordance with the Virginia Stock Corporation Act.

D. The manager and Members of the LLC have adopted resolutions by unanimous written consent approving the Merger upon the terms and conditions hereinafter set forth in accordance with the Virginia Limited Liability Company Act.

E. The Corporation and LLC are hereinafter sometimes referred to collectively as the "*Constituent Entities*."

NOW, THEREFORE, in consideration of the matters recited above and the covenants, conditions and agreements contained herein and intending to be legally bound hereby, the parties hereto agree as follows.

1. **Merger**. The Constituent Entities shall effect the Merger on the terms and conditions set forth in this Plan.

a. **Effect** At the Effective Time, as defined in subsection (b), the LLC shall be merged with and into the Corporation, and the separate existence of LLC, except insofar as it may be continued by statute or Section 7, shall cease, all with the effect provided in Section 13.1-1073 of the Virginia Limited Liability Company Act and Section 13.1-721 of the Virginia Stock Corporation

Act. From and after the Effective Time, the Corporation shall be, and is sometimes hereinafter referred to as, the "*Surviving Corporation*."

b. Effectiveness. Subject to the terms and conditions herein provided, an appropriate Articles of Merger under the Virginia Stock Corporation Act and Virginia Limited Liability Company Act shall be executed by the Constituent Entities to be effective as of November 2, 1999. On November 2, 1999, Articles of Merger shall be filed with the State Corporation Commission of Virginia (the "*Commission*") and the Merger shall become effective upon the date and at the time the Certificate of Merger is issued by the Commission (which date and time are hereinafter referred to as the "*Effective Time*").

2. Conversion of Membership Interests. At the Effective Time, the manner and basis of converting Membership interests of the Company will be as follows: every 1% of Membership interest of the LLC at the Effective Time shall at the Effective Time be exchanged for and converted into and become without further action by the holder thereof 7000 shares of the Corporation Common Stock, and from and after the Effective Time shall represent 7000 shares of the common stock, without par value, of the Surviving Corporation.

3. Articles of Incorporation. From and after the Effective Time, the Articles of Incorporation of the Corporation, as in effect immediately prior to the Effective Time, shall be the Articles of Incorporation of the Surviving Corporation until duly amended in accordance with law, and the Surviving Corporation shall continue to be a corporation organized and governed by the laws of the Commonwealth of Virginia.

4. Bylaws. The Bylaws of the Corporation, as in effect immediately prior to the Effective Time, shall be the Bylaws of the Surviving Corporation until duly amended in accordance with law.

5. Assets and Liabilities. As of the Effective Time, title to all real estate and other property owned by the LLC shall vest in the Surviving Corporation without reversion or impairment, and the Surviving Corporation shall assume all of the liabilities of the LLC.

6. Directors and Officers. The directors and officers of the Corporation immediately prior to the Effective Time shall be the directors and officers of the Surviving Corporation until their successors have been duly elected and qualified, or until their earlier death, resignation or removal.

7. Termination. This Plan may be terminated at any time at or before the Effective Time by agreement of and between the Members of the LLC and the Board of Directors of the Corporation.

8. Further Assurances. If at any time the Surviving Corporation shall consider or be advised that any further assignments or assurances of any other acts are necessary or desirable to carry out the purposes of this Plan, the LLC and its Members and manager shall be deemed to have granted to the Surviving Corporation an irrevocable power of attorney to execute and deliver all such proper deeds, assignments and assurances and to do all acts necessary or proper to carry out the

purposes of this Plan; and the officers and directors of the Surviving Corporation are fully authorized in the name of the LLC.

9. Interpretation. The headings herein are for convenience of reference only, do not constitute a part of this Plan, and shall not be deemed to limit or affect any of the provisions hereof. Words used herein, regardless of the number specifically used, shall be deemed to include any other number, singular or plural, as the context may require.

IN WITNESS WHEREOF, the undersigned have executed this Plan as of the date first above written.

PEGASUS TOWER COMPANY, L.L.C.

By: Gary E. Hearl, Manager
Gary E. Hearl, Manager

PEGASUS TOWER COMPANY, LTD.

By: Gary E. Hearl, President
Gary E. Hearl, President

**COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION**

November 9, 1999

The State Corporation Commission finds the accompanying articles submitted on behalf of

PEGASUS TOWER COMPANY, LTD.

to comply with the requirements of law. Therefore, it is ORDERED that this

CERTIFICATE OF MERGER

be issued and admitted to record with the articles in the office of the Clerk of the Commission. Each of the following:

PEGASUS TOWER COMPANY, A LIMITED COMPANY

is merged into PEGASUS TOWER COMPANY, LTD., which continues to exist under the laws of VIRGINIA with the name PEGASUS TOWER COMPANY, LTD.. The existence of each non-surviving entity ceases, according to the plan of merger.

The certificate is effective on November 9, 1999.

STATE CORPORATION COMMISSION

By



Commissioner

ARTICLES OF INCORPORATION
OF
PEGASUS TOWER COMPANY, LTD.

ARTICLE I

The name of the Corporation is Pegasus Tower Company, Ltd.

ARTICLE II

The purpose for which the Corporation formed is to transact any or all lawful business not required to be specifically stated in these Articles of Incorporation (the "*Articles of Incorporation*") for which a corporation may be incorporated under the Virginia Stock Corporation Act, as amended from time to time (the "*Act*")

ARTICLE III

The initial registered office shall be located in the County of Washington at 366 West Main Street, Suite 100, Abingdon, Virginia 24210, and the initial registered agent at that address shall be Bolling, Hearl, Cook, P.C., a professional corporation registered under Section 54.1-3902 of the Code of Virginia.

ARTICLE IV

The Corporation shall have at least one director and no more than five directors. The initial director of the corporation shall be Gary E. Hearl, whose address is 532 Cresswood Drive, Post Office Box 233, Richlands, Virginia 24641.

ARTICLE V

A. *Authorized Shares.* This Corporation is authorized to issue two classes of stock to be designated, respectively, "*Common Stock*" and "*Preferred Stock*". The total number of shares of Common Stock which this Corporation is authorized to issue is One Million Seven Hundred Thousand (1,700,000). The total number of shares of Preferred Stock which this Corporation has

authority to issue is One Million (1,000,000) all of which are designated as Series A Convertible Preferred Stock ("*Series A Preferred*"). The Common Stock shall be without par value. The Series A Preferred shall be without par value (\$1.00 stated value). No holder of shares of any class of the Corporation shall have any preemptive or preferential right under Section 13.1-651 of the Act to purchase or subscribe to (i) any shares of any class of the Corporation, whether now or hereafter authorized; (ii) any warrants, rights or options to purchase any such shares, or (iii) any securities or obligations convertible into any such shares or into warrants, rights or options to purchase any such shares.

B *Rights of Common Stock and Preferred Stock* The rights, preferences, privileges and restrictions granted to or imposed on the Common Stock and Preferred Stock are as follows

1 *Dividends*

(a) *Series A Preferred* The holders of the Series A Preferred shall be entitled to receive dividends at the rate of eight percent \$0.08 per annum per share (as adjusted for any stock dividends, combinations or splits with respect to such shares), payable out of any assets legally available therefor. Prior to the third anniversary of the closing of first sale of Series A Preferred by the Corporation, such dividends shall be payable only when, as, and if declared by the Board of Directors, shall accrue and shall be payable as printed in the next sentence. Beginning on the third anniversary of the closing of the first sale of the Series A Preferred by the Corporation, the Corporation shall, pursuant to Virginia Stock Corporation Act, begin paying such dividends in cash and, in addition, shall pay all accrued and unpaid dividends in six equal installments over the twelve month period following such third anniversary date.

(b) *Dividend Preference* No dividends (other than those payable solely in the Common Stock of the Corporation) shall be paid or declared on any Common Stock of the Corporation during any fiscal year of the Corporation until all accumulated and unpaid dividends (as adjusted for any stock dividends, combinations or splits with respect to such shares) on the Series A Preferred shall have been paid or declared and set apart during that fiscal year.

2 *Liquidation Preference*

(a) *Preference* In the event of any liquidation, dissolution or winding up of the Corporation, either voluntarily or involuntarily (a "*Liquidation Event*"), the holders of the Series A Preferred first shall be entitled to receive prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of Common Stock of the Corporation, an amount equal to all accrued and unpaid dividends plus the stated value of each share of Series A Preferred then so held, as adjusted for any stock dividends, combinations or splits with respect to such shares.

All of the preferential amounts to be paid to the holders of the Series A Preferred under this Section 2 shall be paid or set apart for payment before the payment or setting apart for payment of any amount for, or the distribution of any assets or funds of this Corporation to, the holders of the Common Stock in connection with such liquidation, dissolution or winding up.

If, upon such Liquidation Event, the assets and funds of the Corporation are insufficient to provide for the payment of the full aforesaid preferential amount to the holders of the Series A Preferred, such assets and funds as are available shall be distributed ratably among the holders of the Series A Preferred in proportion to the full preferential amount each such holder is otherwise entitled to receive.

After the payment or the setting apart of payment of the full preferential amounts to the holders of the Series A Preferred, the holders of the Common Stock and the Series A Preferred shall be entitled to receive all remaining assets and funds of the Corporation ratably on a per-share basis (in the case of the Preferred Stock based upon the number of shares of Common Stock into which each share of Preferred Stock is convertible)

Notwithstanding anything in this Section 2 to the contrary, the maximum amount the holders of the Series A Preferred shall be entitled to receive upon a Liquidation Event shall be equal to the greater of (i) Three Dollars (\$3.00) per share as adjusted for any stock dividends, combinations or splits with respect to such shares, or (ii) the amount the holders of the Series A Preferred would be entitled to receive if the Series A Preferred were converted to Common Stock immediately prior to the Liquidation Event.

(b) *Deemed Liquidation* A merger, consolidation or sale of all or substantially all of the assets of the Corporation which will result in the Corporation's stockholders immediately prior to such transaction not holding (by virtue of such shares or securities issued solely with respect thereto) at least 50% of the voting power of the surviving, continuing or purchasing entity, shall be deemed to be a Liquidation Event.

(c) *Noncash Distributions.* If any of the assets of the Corporation are to be distributed other than in cash under this Section 2 or for any purpose, then the Board of Directors of the Corporation shall promptly engage independent competent appraisers to determine the value of the assets to be distributed to the holders of the Series A Preferred and Common Stock. The Corporation shall, upon receipt of such appraiser's valuation, give prompt written notice to each holder of shares of the Series A Preferred and Common Stock of the appraiser's valuation. Notwithstanding the above, any securities to be distributed to the stockholders shall be valued as follows

(i) If traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the 30-day period ending three (3) business days prior to the closing.

(ii) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the 30-day period ending three (3) business days prior to the closing, and

(iii) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Corporation and the holders of not less than a majority of the outstanding shares of Preferred Stock, provided that if the Corporation and the holders of a majority of the outstanding shares of Preferred Stock are unable to reach agreement, then

by independent appraisal by an investment banker hired and paid by the Corporation, but acceptable to the holders of a majority of the outstanding shares of Preferred Stock.

3. *Voting Rights.*

(a) *General.* Except as set forth herein or as otherwise required by law, the holder of each share of Common Stock issued and outstanding shall have one vote for each share of Common Stock held by such holder, and the holder of each share of Series A Preferred shall be entitled to the number of votes equal to the number of shares of Common Stock into which such share of Series A Preferred could be converted at the record date for determination of the stockholders entitled to vote on such matters, or, if no such record date is established, at the date such vote is taken or any written consent of stockholders is solicited, such votes to be counted together with all other shares of stock of the Corporation having general voting power and not counted separately as a class. Holders of Common Stock and Series A Preferred shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation.

(b) *Board of Directors.* The Corporation shall not, without the written consent or affirmative vote of the holders of at least sixty percent (60%) of the then outstanding shares of Series A Convertible Preferred Stock given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a series, increase the maximum number of directors constituting the Board of Directors to a number in excess of five.

(c) *Election of Board; Committees.* The election of the members of the Board of Directors, and the establishment of, and appointment to, committees thereunder, shall be as set forth in a certain Stock Purchase Agreement entered into by and between the Corporation and the initial holders of the Series A Preferred. The election of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

(d) *Restrictions.* In addition to any other vote required by law or the Articles of Incorporation, without the approval of the holders of at least sixty percent (60%) of the then outstanding shares of Series A Preferred, given in writing or by vote at a meeting, consenting or voting (as the case may be) voting as a separate class, the Corporation will not:

(i) Alter, repeal or otherwise adversely affect the rights and preferences of the holders of the Series A Preferred Stock;

(ii) Increase the authorized number of shares of Preferred Stock;

(iii) Create or authorize the creation of any additional class or series of shares of stock unless the same ranks junior to the Series A Preferred as to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends, redemption and voting;

(iv) Corporation or consolidate or merge into or with any other entity or entities or sell, lease, abandon, transfer or otherwise dispose of all or substantially all its assets;

(v) Redeem capital stock of the Corporation other than pursuant to Section 6 of this Article V or pursuant to the contractual rights of the Corporation to repurchase capital stock from former employees of the Corporation.

(vi) Effect a reclassification or recapitalization of the outstanding capital stock of the Corporation.

(vii) Issue any securities of the Corporation other than stock or stock options approved by the Compensation Committee of the Board of Directors, or

(viii) Amend these Articles of Incorporation or the Corporation's Bylaws

4 **Conversion.** The holders of the Series A Preferred have conversion rights as follows (the "**Conversion Rights**"):

(a) **Series A Preferred Right to Convert.** Each share of Series A Preferred shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Series A Preferred into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$1.00 by the Series A Conversion Price, as hereinafter provided, in effect at the time of the conversion. The price at which shares of Common Stock shall be deliverable upon conversion of the Series A Preferred (the "**Series A Conversion Price**") shall initially be \$1.00 per share of Common Stock. Such initial Series A Conversion Price shall be subject to adjustment as hereinafter provided.

(b) **Automatic Conversion.** Each share of Series A Preferred shall automatically be converted into shares of Common Stock at the then effective, applicable Conversion Price upon the earlier to occur of (i) immediately prior to the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of securities for the account of the Corporation to the public at a price per share of Common Stock of not less than \$3.00 per share (subject to proportionate adjustment in the event of a stock split, reverse stock split, reclassification or stock dividend) and an aggregate offering price of not less than Twenty Five Million Dollars (\$25,000,000), (ii) the election of holders of at least sixty percent (60%) of the Series A Preferred to convert such shares into Common Stock, or (iii) upon the conversion of sixty percent (60%) of the Series A Preferred pursuant to Section 4 (a) above.

(c) **Mechanics of Conversion.** No fractional shares of Common Stock shall be issued upon conversion of Series A Preferred. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then effective respective Conversion Price. Before any holder of Series A Preferred shall be entitled to convert the same into full shares of Common Stock and to receive certificates therefor, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Series A Preferred shall give written notice to the Corporation at such office that he elects to convert the same. The Corporation shall, as soon as practicable thereafter,

issue and deliver at such office to such holder of Series A Preferred, a certificate or certificates for the number of shares of Common Stock to which he shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series A Preferred are to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(d) *Reservation of Stock Issuable Upon Conversion* The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Series A Preferred such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred, and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred, in addition to such other remedies as shall be available to the holder of such Series A Preferred, this Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes.

5 *Adjustments to Conversion Price.*

(a) *Special Definitions* For purposes of this Section 5, the following definitions shall apply:

(i) *"Options"* shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.

(ii) *"Original Issue Date"* for the Series A Preferred shall mean the date on which the first share of Series A Preferred was issued.

(iii) *"Convertible Securities"* shall mean any evidences of indebtedness, shares (other than the Series A Preferred) or other securities directly or indirectly convertible into or exchangeable for Common Stock.

(iv) *"Additional Shares of Common Stock"* shall mean all shares of Common Stock issued (or, pursuant to subsection 5(c), deemed to be issued) by the Corporation after the Original Issue Date, other than

(A) shares of the Corporation's Common Stock issued upon conversion of the Series A Preferred,

(B) shares of Common Stock issued to officers, directors, employees of and consultants to the Corporation pursuant to stock option plans approved by the Compensation Committee of the Board of Directors, pursuant to the Corporation's stock option plan.

(C) as a dividend or distribution on Series A Preferred or any event for which adjustment is made pursuant to subsection 5(f) or 5(g) hereof, or

(D) to any bank, equipment or real property lessor or other similar institution if and to the extent that the transaction in which such issuance is to be made is unanimously approved by the Corporation's Board of Directors and is for purposes other than equity financing

(b) *No Adjustment of Conversion Price* No adjustment in the Conversion Price of the Series A Preferred shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the applicable Conversion Price of such series in effect on the date of and immediately prior to such issue.

(c) *Deemed Issue of Additional Shares of Common Stock* In the event the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number that would result in an adjustment pursuant to clause (ii) below) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share (determined pursuant to subsection 5(g) hereof) of such Additional Shares of Common Stock would be less than the applicable Conversion Price of the Series A Preferred in effect on the date of and immediately prior to such issue, or such record date and provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued

(i) no further adjustment in the Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities,

(ii) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, or increase or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be

recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities.

(iii) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:

(A) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange; and

(B) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(iv) no readjustment pursuant to clause (ii) or (iii) above shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (i) the Conversion Price on the original adjustment date, or (ii) the Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date; and

(v) in the case of any Options which expire by their terms not more than 30 days after the date of issue thereof, no adjustment of the Conversion Price shall be made until the expiration or exercise of all such Options, whereupon such adjustment shall be made in the manner provided in clause (iii) above

(d) *Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock*

(i) *Series A Preferred.* In the event that after the Original Issue Date the Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to subsection 5(c)) without consideration or for a consideration per share less than the Conversion Price of the Series A Preferred in effect on the date of and immediately prior to such issue, then and in such event, such Conversion Price of the Series A Preferred shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent)

determined by multiplying such Conversion Price of the Series A Preferred, by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Conversion Price; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued, and provided further that, for the purposes of this subsection (d) all shares of Common Stock issuable upon conversion of outstanding Series A Preferred and outstanding Convertible Securities or exercise of outstanding Options shall be deemed to be outstanding, and immediately after any Additional Shares of Common Stock are deemed issued pursuant to subsection 5(c), such Additional Shares of Common Stock shall be deemed to be outstanding

(e) *Determination of Consideration* For purposes of this Section 5, the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows

(i) *Cash and Property*: Except as provided in clause (ii) below, such consideration shall

(A) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation excluding amounts paid or payable for accrued interest or accrued dividends.

(B) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith by the Board, *provided, however*, that no value shall be attributed to any services performed by any employee, officer or director of the Corporation, and

(C) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received with respect to such Additional Shares of Common Stock, computed as provided in clauses (A) and (B) above, as determined in good faith by the Board

(ii) *Options and Convertible Securities* The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 5(c), relating to Options and Convertible Securities, shall be determined by dividing

(x) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or

exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities by

(y) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities

(f) *Adjustments for Stock Dividends, Subdivisions, Combinations or Consolidations of Common Stock.* In the event the outstanding shares of Common Stock shall be subdivided (by stock dividend, stock split, or otherwise), into a greater number of shares of Common Stock, the Series A Conversion Price then in effect shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, the Series A Conversion Price then in effect shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

(g) *Adjustments for Other Distributions.* In the event the Corporation at any time or from time to time makes, or fixes a record date for the determination of holders of Common Stock entitled to receive any distribution payable in securities or assets of the Corporation other than shares of Common Stock then and in each such event provision shall be made so that the holders of Series A Preferred shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of securities or assets of the Corporation which they would have received had their Series A Preferred been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the date of conversion, retained such securities or assets receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 5 with respect to the rights of the holders of the Series A Preferred.

(h) *Adjustments for Reclassification, Exchange and Substitution.* If the Common Stock issuable upon conversion of the Series A Preferred shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for above), then and in each such event the holder of each share of Series A Preferred shall have the right thereafter to convert such share into the kind and amount of shares of stock and other securities and property receivable upon such reorganization or reclassification or other change by holders of the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of the Series A Preferred immediately before that change, all subject to further adjustment as provided herein.

(i) *No Impairment.* Without the prior written consent of the holders of a majority of the Series A Preferred, the Corporation will not, by amendment of its Articles of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but will

at all times in good faith assist in the carrying out of all the provisions of Section 5 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Series A Preferred against impairment.

(j) *Certificate as to Adjustments* Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to Section 5, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series A Preferred a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of Series A Preferred.

6. *Redemption.*

(a) Put Option by Series A Preferred Holders

(i) Beginning on the fifth anniversary date on which the first share of Series A Preferred was issued, the holders of at least fifty percent (50%) of the then outstanding shares of Series A Preferred may, by 30 days prior written notice, require the Corporation, to the extent it may lawfully do so, to redeem all, but not less than all (except as provided below), of the shares of Series A Preferred held by such holders for a sum per share equal to One Dollar (\$1.00) per share (as adjusted for any stock dividends, combinations or splits with respect to such shares) plus all accrued and unpaid dividends (the total amount of such payment is hereafter referred to collectively, as the "*Series A Redemption Price*"), payable in ten (10) equal quarterly installments of principal and interest at the rate of eight percent (8%) per annum.

(ii) After notice has been given by holders initiating a request for redemption, the Corporation shall send written notice by mail, first class postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of Series A Preferred, at the address last shown on the records of the Corporation for each holder, specifying the number of shares to be redeemed, the Series A Redemption Price, the place at which payment may be obtained and calling upon each initiating holder to surrender to the Corporation, in the manner and at the price designated, his, her or its certificate or certificates representing the shares to be redeemed (the "*Series A Redemption Notice*"). Within 10 days of receipt of the Series A Redemption Notice, a non-initiating holder of Series A Preferred may, by written notice, require the Corporation to redeem its shares along with those of the initiating holders. Except as provided herein, on or after the applicable Series A Redemption Date, each holder of Series A Preferred to be redeemed at such time shall surrender to the Corporation the certificate or certificates representing such shares, in the manner and at the price designated in the Series A Redemption Notice, and thereupon the Series A Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In the event fewer than all of the shares

represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares

(iii) Unless there shall have been a default in payment of the Series A Redemption Price, all rights of the holders of shares of Series A Preferred being redeemed (except the right to receive the Series A Redemption Price upon surrender of their certificate or certificates) shall cease with respect to such shares at such time, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for redemption are insufficient to redeem the total number of shares of Series A Preferred required to be redeemed, those funds that are legally available will be used to redeem the maximum possible number of such shares ratably among the holders of such shares to be redeemed based upon their holdings of Series A Preferred. The shares of Series A Preferred not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. Once additional funds of the Corporation are legally available for the redemption of shares of Series A Preferred, such funds will immediately be used to redeem the balance of the shares that the Corporation has become obligated to redeem on either Series A Redemption Date but that it has not redeemed.

(b) *Common Stock* The Common Stock shall not be redeemable by the Corporation (other than pursuant to the exercise of a contractual right of first refusal of the Corporation)

7 *Notices of Record Date* In the event that the Corporation shall propose at any time

(a) to declare any dividend or distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus,

(b) to offer for subscription *pro rata* to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights,

(c) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock, or

(d) to merge or consolidate with or into any other Corporation, or sell, lease or convey all or substantially all its property or business, or to liquidate, dissolve or wind up, then, in connection with each such event, the Corporation shall send to the holders of the Series A Preferred,

(i) at least 20 days' prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto) or for determining rights to vote in respect of the matters referred to in (c) and (d) above, and

(ii) in the case of the matters referred to in (c) and (d) above, at least 20 days' prior written notice of the date when the same shall take place (and specifying the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event)

Each such written notice shall be delivered personally or given by first class mail, postage prepaid, addressed to the holders of the Preferred Stock at the address for each such holder as shown on the books of this Corporation.

8. *Limitations on Re-issuance.* No share or shares of Series A Preferred acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be cancelled, retired and eliminated from the shares which the Corporation shall be authorized to issue.

ARTICLE VI

To the full extent that the Act, as it exists on the date hereof or may hereafter be amended, permits the limitation (which limitation shall be (i) \$1 or the minimum amount allowed to be stated by such Act if a specific dollar amount is required to be stated or (ii) the full extent of the limitation set forth in such Act if no specific dollar amount is required to be stated) or elimination of the liability of directors or officers, a director or officer of the Corporation shall not be liable to the Corporation for monetary damages. Any amendment to or repeal of this Article shall not adversely affect any right of protection of a director or officer of the Corporation for or with respect to any acts or omissions of such director or officer occurring prior to such amendment or repeal.

ARTICLE VII

1. In this Article:

"applicant" means the person seeking indemnification pursuant to this Article.

"expenses" includes counsel fees.

"liability" means the obligation to pay a judgment, settlement, penalty, fine, including any excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

"party" includes an individual who was, is or is threatened to be made a named defendant or respondent in a proceeding.

"proceeding" means any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal.

2. In any proceeding brought by or in the right of the Corporation or brought by or on behalf of shareholders of the Corporation, no director or officer of the Corporation shall be liable to the Corporation or its shareholders for monetary damages with respect to any transaction, occurrence or course of conduct, whether before or after the effective date of this Article, except for liability resulting from that person's having engaged in willful misconduct or a knowing violation of the criminal law or any federal or state securities law.

3. The Corporation shall indemnify (i) any person who was or is a party to any proceeding, including a proceeding brought by a shareholder in the right of the Corporation or brought by or on behalf of shareholders of the Corporation, by reason of the fact that the person is or was a director or officer of the Corporation, or (ii) any director or officer who is or was serving at the request of the Corporation as a director, trustee, partner or officer of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against any liability incurred by that person in connection with the proceeding unless that person engaged in willful misconduct or a knowing violation of the criminal law. A person whose duties to the Corporation also impose duties on, or otherwise involve services by, that person to an employee benefit plan or to participants in or beneficiaries of the plan is considered to be serving the plan at the Corporation's request. The Board of Directors is hereby empowered, by a majority vote of a quorum of disinterested directors, to enter into a contract to indemnify any director or officer in respect of any proceedings arising from any act or omission, whether occurring before or after the execution of the contract.

4. No amendment or repeal of this Article shall affect the rights provided under this Article with respect to any act or omission occurring before the amendment or repeal. The Corporation shall promptly take all such actions, and make all such determinations, as shall be necessary or appropriate to comply with its obligation to make any indemnity under this Article and shall promptly pay or reimburse all reasonable expenses, including attorneys' fees, incurred by any such director, officer, employee or agent in connection with such actions and determinations or proceedings of any kind arising therefrom.

5. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that the applicant did not meet the standard of conduct described in Section (2) or (3) of this Article.

6. Any indemnification under Section (3) of this Article (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification is proper in the circumstances because the applicant has met the standard of conduct set forth in Section (3). The determination shall be made:

a. By the Board of Directors by a majority vote of a quorum consisting of directors not at the time parties to the proceeding;

b. If a quorum cannot be obtained under subsection (a) of this Section, by majority vote of a committee duly designated by the Board of Directors (in which designation directors who are parties may participate), consisting solely of two or more directors not at the time parties to the proceeding;

c. By special legal counsel:

(1) Selected by the Board of Directors or its committee in the manner prescribed in subsection (a) or (b) of this section; or

(2) If a quorum of the Board of Directors cannot be obtained under subsection (a) of this section and a committee cannot be designated under subsection (b) of this section, selected by majority vote of the full Board of Directors, in which selection directors who are parties may participate; or

d. By the shareholders, but shares owned by or voted under the control of directors who are at the time parties to the proceeding may not be voted on the determination.

Any evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is appropriate, except that if the determination is made by special legal counsel, such evaluation as to reasonableness of expenses shall be made by those entitled under subsection (c) of this Section 6 to select counsel.

Notwithstanding the foregoing, if the composition of a majority of the Board of Directors has changed after the date of the alleged act or omission with respect to which indemnification is claimed, any determination with respect to any claim for indemnification or advancement of expenses made pursuant to this Article shall be made by special legal counsel agreed upon by the Board of Directors and applicant. If the Board of Directors and the applicant are unable to agree upon such special legal counsel, the Board of Directors and the applicant each shall select a nominee, and the nominees shall select such special legal counsel.

7. a. The Corporation shall pay for or reimburse the reasonable expenses incurred by any applicant who is a party to or otherwise involved in a proceeding in advance of final disposition of the proceeding or the making of any determination under Section (3) if the applicant furnishes the Corporation:

(1) a written statement of the applicant's good faith belief that he or she has met the standard of conduct described in Section (3); and

(2) a written undertaking, executed personally or on the applicant's behalf, to repay the advance if it is ultimately determined that the applicant did not meet such standard of conduct.

b. The undertaking required by paragraph (2) of subsection (a) of this Section shall be an unlimited general obligation of the applicant but need not be secured and may be accepted without reference to financial ability to make repayment.

c. Authorizations of payments under this Section shall be made by the persons specified in Section 6.

8. The Board of Directors is hereby empowered, by majority vote of a quorum consisting of disinterested directors, to cause the Corporation to indemnify or contract to

indemnify any person not specified in Section (2) or (3) of this Article who was, is or may become a party to any proceeding, by reason of the fact that the person is or was an employee or agent of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, to the same extent as if that person were specified as one to whom indemnification is granted in Section (3). The provisions of Sections (4) through (7) of this Article shall be applicable to any indemnification provided hereafter pursuant to this Section (8).

9. The Corporation may purchase and maintain insurance to indemnify it against the whole or any portion of the liability assumed by it accordance with this Article and may also procure insurance, in such amounts as the Board of Directors may determine, on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against any liability asserted against or incurred in any such capacity or arising from the person's status as such, whether or not the Corporation would have power to indemnify that person against such liability under the provisions of this Article.

10. Every reference herein to directors, officers, employees or agents shall include former directors, officers, employees and agents and their respective heirs, executors and administrators. The indemnification hereby provided and provided hereafter pursuant to the power hereby conferred by this Article on the Board of Directors shall not be exclusive of any other rights to which any other person may be entitled, including any right under policies of insurance that may be purchased and maintained by the Corporation or others, with respect to claims, issues or matters in relation to which the Corporation would not have the power to indemnify that person under the provisions of this Article. Such rights shall not prevent or restrict the power of the Corporation to make or provide for any future indemnity, or provisions for determining entitlement to indemnity, pursuant to one or more indemnification agreements, bylaws, or other arrangements (including, without limitation, creation of trust funds or security interests funded by letters of credit or other means) approved by the Board of Directors (whether or not any of the directors of the Corporation shall be a party to or beneficiary of any such agreements, bylaws or arrangements); provided, however, that any provision of such agreements, bylaws or other arrangements shall not be effective if and to the extent that it is determined to be contrary to this Article or applicable laws of the Commonwealth of Virginia.

11. Each provision of this Article shall be severable, and an adverse determination as to any such provision shall in no way affect the validity of any other provision.

ARTICLE VIII

Except as provided in (a) Article V above and (b) Section 4.5 of the Stock Purchase Agreement dated November __, 1999 and executed among the Corporation and certain private investors, the Corporation reserves the right to amend, alter, change or repeal any provision

contained in this Articles of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

Todd M. Lynn
Todd M. Lynn

11/2/99
Date

**COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION**

November 2, 1999

The State Corporation Commission has found the accompanying articles submitted on behalf of
Pegasus Tower Company, Ltd.

to comply with the requirements of law, and confirms payment of all required fees.

Therefore, it is ORDERED that this

CERTIFICATE OF INCORPORATION

be issued and admitted to record with the articles of incorporation in the Office of the Clerk of the Commission, effective November 2, 1999.

The corporation is granted the authority conferred on it by law in accordance with the articles, subject to the conditions and restrictions imposed by law.

STATE CORPORATION COMMISSION

By



Commissioner